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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIPS OF N.H. and E.M., minor)
children, and their father, GREGORY)
HARDISTER)

GREGORY HARDISTER,)
Appellant-Respondent,)

vs.)

MARION COUNTY DIVISION OF)
CHILD SERVICES,)
Appellee-Petitioner,)
and)
CHILD ADVOCATES, INC.,)
Guardian Ad Litem.)

No. 49A02-0608-JV-675

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles J. Deiter, Judge
Cause No. 49D08-0307-JT-833

February 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent Gregory Hardister (“Father”) appeals an order terminating his parental rights in N.H. and E.M., upon the petition of the Appellee-Petitioner Marion County Division of Child Services (“MDCS”). We affirm.

Issue

Father presents the single issue of whether the MDCS established, by clear and convincing evidence, a reasonable probability that the conditions that resulted in N.H.’s and E.M.’s removal or the reasons for placement outside the home of Father will not be remedied.

Facts and Procedural History¹

Monica Hardister (“Monica”) and Father had two children, N.H. and E.M., currently eleven and seven years old, respectively. Monica also had two children from a previous relationship, A.V. and B.V. Monica and Father eventually separated, and the four children lived with Monica. Monica passed away in early 2000, making Father the full-time custodian of the four children. At that time, Father lived with Sabrina Risotto (“Sabrina”), whom he eventually married. Sabrina also had two children from a previous marriage.

On May 24, 2000, there was a service referral case opened for medical neglect

¹ MDCS’s brief failed to comply with Ind. Appellate Rule 46(A)(6)(a), requiring the facts in the Statement of Facts to be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C). Ind. Appellate Rule 22(C) requires any factual statement be supported by a citation to the page where it appears in the Appendix or the Transcript or exhibits. We remind counsel for MDCS to abide by these

regarding E.M. In June of 2001 during her birthday party, Father noticed that N.H. was sad and not participating in her party. Soon after the party, N.H. and a number of the other children in the household revealed to Father that they had been sexually molested by B.V. Father took N.H. to Riley Hospital the next day, and B.V. was placed in Lutherwood, a treatment center for children recovering from the effects of abuse or neglect. B.V. has never returned to Father's household.

In August 2001, a Child in Need of Services ("CHINS") petition was filed alleging unreasonable corporal punishment administered to N.H. by Father. The children were removed from Father and Sabrina's home, but later returned and the case was closed in March of 2002.

On June 6, 2002, Father took N.H. to an inpatient psychological facility for suicidal and homicidal ideation due to N.H. pulling out her hair and cutting herself and her siblings with a razor blade. N.H. had numerous bruises all over her body, all in various stages of healing. Father admitted using corporal punishment on N.H. in response to N.H.'s aggressive behavior. Based on this incident and the similar incident a year prior, MDCS filed a CHINS petition regarding Hardister's children, N.H. and E.M., and A.V. N.H. was placed in therapeutic foster care. E.M. and A.V. remained with Father until October of 2002 when they were removed due to Father prohibiting MDCS from having access to the children. E.M. was placed with his paternal grandmother, and A.V. was placed in the same therapeutic foster home as N.H.

After the disposition hearing on July 8, 2002, the trial court ordered Father to notify

requirements.

his caseworker of any changes in his address, secure and maintain stable employment, complete a home-based counseling program with the children, complete parenting assessment, complete anger control classes, refrain from using physical discipline, establish paternity as to each child, complete sex offender or support program addressing the affects on children, and visit his children on a regular basis.

In October of 2002, Sabrina's two children were also removed from the home under a separate CHINS petition. Family counseling initially involved Father, Sabrina, and the five children that had been living in the home. However, in October 2003, Sabrina indicated at a case conference that she was moving out of the home, fearing that staying might jeopardize her ability to regain custody of her two children due to Father's slow progress in his services. In January of 2004, family counseling was discontinued due to regression in the children's condition. Father was given a referral to restart family counseling in May of 2004, but the counseling never took place.

By June 26, 2003, MDCS had filed a petition to terminate Father's parental rights as to N.H. and E.M.² The termination hearings were held on December 13, 2004, January 17, 2006, March 10, 2006, and May 16, 2006. During the time between the hearings, Father was convicted for residential entry as a Class D felony and served his sentence from April through November, 2005. When Father was released, he moved in with Sabrina, failing to put his name on the lease or inform the landlord of his presence. At the conclusion of the termination hearings, the trial court concluded that the conditions for removal of N.H. and

² A.V. was not included in the petition, because, although he served as her guardian, Father is not A.V.'s biological parent.

E.M. will probably not be remedied, the continuation of the parent-child relationship poses a safety threat to the children, and that termination of the parent-child relationship is in the best interests of the children. Father now appeals.

Discussion and Decision

I. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

II. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002). The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the MDCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are

- not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

In judging a parent's fitness, the trial court should examine the parent's fitness at the time of the termination hearing, as well as the parent's habitual patterns of conduct, to determine whether there is a substantial probability of future neglect or deprivation of the child. In re J.M., 802 N.E.2d 40, 44-45 (Ind. Ct. App. 2004), trans. denied. A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Id. at 45. Moreover, a trial court may reasonably consider the services offered to the parent

and the parent's response to those services. Id.

III. Analysis

Father's arguments only challenge whether MDCS presented sufficient evidence to prove that there is a reasonable probability that the conditions that resulted in the children's removal or that the continuation of the parent-child relationship poses a threat to the well-being of the children. We observe that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus requires the MDCS to establish by clear and convincing evidence only one of the two requirements of subparagraph (B). Termination was proper if the MDCS established that the conditions leading to removal would probably not be remedied or that the continuation of the parent-child relationship posed a threat to N.H. and E.M.

Father does not have the ability to provide a stable environment for N.H. and E.M. due to the lack of adequate housing and his inconsistent income. Father currently resides with Sabrina, but is not on the lease nor does the landlord know of his residency. Furthermore, Father has had sporadic employment. He lost his job when he was incarcerated. When he was put on work release, Father had a job at Dial One Allied Building Services and was laid off a few weeks before the final termination hearing, yet had not filed for unemployment compensation. His stated source of income is from selling fragrances and pies. In addition to his financial responsibilities for N.H. and E.M., Father is twenty-seven thousand dollars in arrears on child support for his other children from Father's relationships prior to Monica.

Father has completed a number of his court-ordered services, but has not shown that he has benefited from them. Despite completing his individual counseling and anger management classes, Father continues to have issues controlling his temper. In May of 2005,

two years after completing his anger management classes, Father pushed Sabrina's older child toward a broom in an effort to coerce the child to clean up cereal on the floor. The boy fell to the ground. Father picked him up and again pushed him towards the broom, causing the boy to fall to the ground. Father pulled off his belt and raised it as if he was about to strike the child. The boy screamed, prompting Sabrina to intervene. Sabrina and Father argued about Father's method of discipline. Father admitted in his testimony that there had been other similar incidents. At the end of their argument, Father became so angry that he punched a hole in the wall. This incident reflects Father's past behavior of whipping N.H. with a belt that prompted the removal of N.H. and E.M. from Father's care.

Based on this evidence, it can be reasonably inferred that there is substantial probability of future neglect or deprivation of the children and that the conditions that resulted in N.H.'s and E.M.'s removal will not be remedied.

Affirmed.

VAIDIK, J., and BARNES, J., concur.